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From:

Sent: Monday, November 01, 2010 4:55:51 PM

To:

Cc:

Subject: RE: Form 1120x for

Hi

The email responds to your request for assistance. You asked for advice regarding whether there is any limitations period applicable to reducing tax liability based on a net operating loss (NOL) carryback.

Section 6511(a) provides that a "[c]laim for credit or refund of an overpayment . . . shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." Section 6511(d)(2) provides an additional special period of limitation with respect to a claim for a refund or credit relating to an overpayment attributable to a NOL carryback. The relevant portion of section 6511(d)(2) provides, in lieu of the 3 year period of limitation prescribed in section 6511(a), the period shall be the period ending 3 years after the due date of the return (plus extensions) for the taxable year of the NOL.

In this case, the Service disallowed the taxpayer's purported claim for credit because it determined that it was untimely. However, you provided that the NOL carryback, if allowed, would not result in an overpayment which would generate a credit or refund but would simply reduce the taxpayer's outstanding tax liability. Even though there are restrictions on the time within which the Service may allow a claim for credit or refund, no such statutory impediments exist to prevent the carryback of an NOL to reduce a taxpayer's outstanding tax liabilities.

Please let me know if you have any questions.

Thank you.